39.

During the prosecution of a co-pending application in which the plaintiff Holkesvick is the sole inventor, a Patent Office action dated April 20, 1964, listed Leffelman patent No. 779,550, Zein et al. patent No. 439,263, Howe patent No. 771,251, and Stenborg patent No. 1,103,849, all of which show friction-type lowering devices.

40.

Plaintiff did not call Leffelman patent No. 779,550, nor any of the other patents showing friction-type lowering devices, to the attention of the Examiner handling the application which matured into the patent in suit, because the Examiner had already cited and relied upon one such friction-type lowering device patent and two friction-type twine tensioning devices.

41.

When the terminology of claims 8, 9 and 10 of patent No. 3,197,204 is considered in view of the description of the exercisers shown and described in the specification and drawings of the patent in suit, each of claims 8, 9 and 10 reads on the accused exerciser exemplified by Plaintiffs' Exhibit 57.

42.

The accused exerciser exemplified by Plaintiffs' Exhibit 57 and the exerciser of each of claims 8, 9 and 10 of patent No. 3,197,204 do the same work in substantially the same way, and accomplish substantially the same result. In both the patented exerciser and the accused exerciser, a length of rope enters a passageway at one end of an elongated shaft portion, extends at least partially around the shaft portion, passes through passageways adjacent the other end of the

shaft portion so as to reverse the direction of the length of rope, thence back to and at least partially around the shaft portion and out through another passageway at said one end. In both, the amount of resistance is varied by changing the number of turns of the rope around the shaft portion, and both operate as a friction-type exerciser when the user alternately pulls on the ends of the rope which extend from the passageways at said one end of the device.

43.

Any Finding of Fact herein which may be properly construed in whole or in part as a Conclusion of Law shall be so deemed and treated as if set forth under the following Conclusions of Law.

CONCLUSIONS OF LAW

I.

This Court has jurisdiction over the parties and over the subject matter of this action, and venue is proper.

II.

The plaintiff E. E. Holkesvick is the sole and exclusive owner of all right, title and interest in and to patent No. 3,197,204.

III.

United States patent No. 3,197,204 is good and valid in law.

IV.

The exerciser of patent No. 3,197,204, and as defined by the claims thereof, was not obvious at the time the invention was made to even a person skilled in the exerciser and/or physical education art, let alone to a person having ordinary skill in such art (35 U.S.C. 103). Although the strict test of "flash of creative genius" referred to by the Supreme Court in

Cuno Corp. v. Automatic Devices Corp., 314 U.S. 84 (1941), was apparently abolished by Congress by the inclusion of the last sentence in Section 103 of Title 35, United States Code (*Graham v. John Deere Co.*, 383 U.S. 1, 86 S. Ct. 684, 15 L. Ed. 2d 545), the completely new type of exerciser of the patent in suit appears to be the result of just such a flash of creative genius, which is a further attribute of true invention. There were also the unexpected results and unusual and surprising consequences referred to in *Great A. & P. Tea Co. v. Supermarket Equip. Corp.*, 340 U.S. 147.

V.

Patent No. 3,197,204 is presumed to be valid pursuant to 35 U.S.C. 282, and this presumption of validity is strengthened where, as here, the prior patents relied upon by the defendants are no more pertinent than the reference patents cited by the Patent Office examiners. *Neff Instrument Corporation v. Cohu Electronics, Inc.*, 298 F. 2d 82, 86 (9 cir. 1961) and *Radio Corporation of America v. Radio Engineering Laboratories*, 293 U.S. 1, 54 S. Ct. 752, 79 L. Ed. 163 (1934).

VI.

The copying of the exerciser of the patent in suit by the defendants is further evidence of invention; they were familiar with its construction, its use and its advantages, and the demand which had been created for it. The prior art relied on by the defendants was permitted to lay dormant for more than half a century until the trial of this infringement action. *Ric-Wil Co. v. E. B. Kaiser Co.*, 179 F. 2d 401, 404 (7 Cir. 1950), and *Colgate-Palmolive Company v. Carter Products*, 230 F. 2d 855, 862 (4 Cir. 1956), cert. denied, 352 U.S. 843, 77 S. Ct. 43, 1 L. Ed. 2d 59.

VII.

The high degree of commercial success of the exerciser of patent No. 3,197,204 is further evidence of invention. *National Sponge Co. v. Rubber Corp. of Cal.* 286 F. 2d 731, 736 (9 Cir. 1961) and *Hayes Spray Gun Company v. E. C. Brown Company,* 291 F. 2d 319 (9 Cir. 1961).

VIII.

The defendants have infringed claims 8, 9 and 10 of patent No. 3,197,204 within the Central Judicial District of California within the six year period immediately preceding the filing of the Complaint herein, by making, using and selling the accused exerciser, Plaintiffs' Exhibit 57. The accused exerciser falls withing the wording of each of claims 8, 9 and 10 of patent No. 3,197,204, and, in addition, the accused exerciser infringes each of said claims under the "Doctrine of Equivalents" because it and the exerciser of the claims do the same work in substantially the same way, and accomplish substantially the same result. *Graver Tank Co. v. Linde Air Prod. Co.,* 339 U.S. 605, 70 S. Ct. 854, 94 L. Ed. 1097 (1950).

IX.

The plaintiffs are entitled to have the preliminary injunction enjoining and restraining the defendants and all those in active concert or participation therewith from infringing patent No. 3,197,204, made permanent pursuant to 35 U.S.C. 283.

X.

The preliminary injunction was lawfully and regularly issued by the Court and therefore the plaintiffs are entitled to have exonerated the security which they posted.

XI.

There was no fraud on the Patent Office during the prosecution of the application which matured into pat-

ent No. 3,197,204, the patent in suit. Once the Patent Office examiners located and cited prior art from a particular category, it was no longer the applicants' duty to call to the attention of the examiners, every single piece of possible prior art in the same category or which involved the same general construction and mode of operation. French patent No. 995,304 (Allain) cited by the Patent Office examiners, is in the same category as the fire-escape art listed by the defendants.

XII.

None of the defendants is guilty of false patent marking under 35 U.S.C. 292. and, if there existed any violation of said statute a fine will be denied to Plaintiffs on the fourth count as *de minimis*.

XIII.

This is not such an exceptional patent case as to warrant the awarding of reasonable attorneys fees to the plaintiffs pursuant to 35 U.S.C. 285.

XIV.

The plaintiffs are entitled to recover of the defendants, their taxable costs and disbursements therein and to have execution therefor.

XV.

Any Conclusion of Law herein which may be properly construed in whole or in part as a Finding of Fact, shall be so deemed and treated as if set forth under the Findings of Fact above.

Judgment shall be entered for the plaintiffs Exer-Genie, Inc. and E. E. Holkesvick in accordance with the above Findings of Fact and Conclusions of Law.

Dated: August ...., 1969.

/s/ Irving Hill
United States District Judge

Opinion of Court of Appeals.

United States Court of Appeals, for the Ninth Circuit.

Exer-Genie, Inc., and E. E. Holkesvick, *Plaintiffs-Appellees,* vs. Alexander G. McDonald and Buddy Systems, Inc., *Defendants-Appellants.* No. 25,229.

[September 14, 1971].

Appeal from the United States District Court for the Central District of California.

Before: BROWNING, ELY, and CARTER, Circuit Judges

BROWNING, Circuit Judge:

This is an appeal from a decision of the district court holding plaintiffs' Patent No. 3,197,204 valid and, as to claims 8, 9 and 10, infringed. We conclude that the patent is invalid, and reverse.

I

The patented device, as defined by the claims in suit, consists of (1) a shaft with a hub at each end and two passageways in each hub; (2) a length of rope extending through one passageway in one hub, at least partially around the shaft, through the passageways in the other hub, again at least partially around the shaft, and then through the other passageway in the first hub; and (3) at one end, a means for suspending the device from a support. The claims also include certain details regarding the holes or "passageways" through the end pieces or "hubs," as will be noted later.

The opening paragraph of the specification describes the patented device as "a novel exercising device which is especially suitable for home use." It operates on a

friction-resistance principle. The user pulls the rope through the device, exerting sufficient force to overcome the friction created by the wrapping of the rope around the shaft, thus exercising his muscles. The greater the number of turns of the rope, the greater the resistance the user must overcome, and the more strenuous the exercise.

As the findings disclose, plaintiff Holkesvick developed his exerciser after observing a fire-escape device which enabled the user to lower himself from a building by sliding slowly down a rope. The slow descent was made possible by utilizing friction created by wrapping the rope around a shaft attached to the user's belt.

As the district court found, "the principle of frictional resistance of a rope around a shaft is very old and well known, and the use of this principle with fire-escape devices goes back at least to 1874, based upon the prior art listed by the defendants, . . . some 85 years prior to the invention of the exerciser device of the patent in suit." Nonetheless, the district court held plaintiffs' exerciser patent was valid, essentially because until plaintiff Holkesvick did so, "no one made the transition to an exerciser from a friction-type fire escape device nor from any other device employing the friction-resistance principle."

II

We think reversal is required by the principles and on the authorities cited in *Pevely Dairy Co. v. Bordon Printing Co.*, 123 F.2d 17, 19 (9th Cir. 1941):

> "It is well settled that mere application of an old device to a new use does not constitute inven-

tion.[1] Roberts v. Ryer, 91 U.S. 150, 159, 23 L. Ed. 267; Peters v. Hanson, 129 U.S. 541, 542, 553, 9 S.Ct. 393, 32 L.Ed. 742; Ansonia Brass & Copper Co. v. Electrical Supply Co., 144 U.S. 11, 18, 12 S.Ct. 601, 36 L.Ed. 327; Lovell Mfg. Co. v. Cary, 147 U.S. 623, 634, 635, 13 S.Ct. 472, 37 L.Ed. 307; Miller v. Eagle Mfg. Co., 151 U.S. 186, 201, 14 S.Ct. 310, 38 L.Ed. 121; Powers-Kennedy Contracting Co. v. Concrete Mixing & Conveying Co., 282 U.S. 175, 186, 51 S. Ct. 95, 75 L.Ed. 278. On the other hand, adaptation of an old device to a new use may constitute invention, especially where the device is transferred from one art to another. C. & A. Potts & Co. v. Creager, 155 U.S. 597, 606-609, 15 S.Ct. 194, 39 L.Ed. 275. But where such adaptaion—with or without such transfer—is the product of mere mechanical skill, it does not constitute invention. C. & A. Potts & Co. v. Creager, supra; Concrete Appliances Co. v. Gomery, 269 U.S. 177, 185, 46 S.Ct. 42, 70 L.Ed. 222."

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[1]This and similar statements quoted throughout this opinion are subject to the caveat that a new use of an old machine may be patented as a process. What is not patentable is the old machine itself. *See* Federico, Commentary on the New Patent Act, 35 U.S.C.A. 1, 16. Thus, a "process" may be patented (35 U.S.C. §101), and "process" is defined to include "a new use of a known . . . machine" (35 U.S.C. § 100(b)). But "it was the intent of Congress to authorize the grant of a patent for a new use . . . only when such use is claimed in the form of a process, art or method. Where an applicant's contibution resides in the use or act of using an old apparatus for new purposes, a claim drawn to the old apparatus does not define the invention to meet the statutory requirement of particularity and distinctness." 2 Deller's Walker on Patents 293-94 (1964). *See* Application of Hack, 245 F.2d 246, 248 (C.C.P.A. 1957). *See also* Gottschalk, "The Term 'Process' * * * Includes a New Use.", 40 Pat. Off. Soc'y 451, 455-62 (1952).

1. That the device involved here is old appears from the expired fire-escape patents referred to by the district courts, including De Boucherville, No. 147,828 (1874), Brooke, No. 308,052 (1884); Gregory (England), No. 13,939 (1887), Van Scoy, No. 425,716 (1890), Ross, No. 434,888 (1890), Leffelman, No. 779,550 (1905).

The devices disclosed in these fire-escape patents and plaintiffs' device are all rope brakes, operating on a friction-resistance principle, and consisting basically of a friction post and a rope. The purpose of function of all these devices is to impede without arresting the movement of a rope, relative to the device by causing it to pass around a metal post. Leffelman, No. 799,550, and De Boucherville, No. 147,838, disclose rope brakes constructed in essentially the same manner as plaintiffs'. Thus in structure and function these two devices and plaintiffs' were the same. The uncontradicted testimony was that each could be used either as exercisers or as rope brake fire escapes, with certain adaptations mentioned later.

Thomas Jefferson, a moving-spirit behind the American patent system, advanced the basic principle that a patent monopoly should not be granted upon a new user for an old machine: "[A] machine of which we are possessed [may] be applied by every man to any use of which it is susceptible." VI Writings of Thomas Jefferson at 181 (Washington ed.), quoted in *Graham v. John Deere Co.*, 383 U.S. 1, 10 n. 3 (1966). Elaborating on this principle, the Supreme Court said of a freezing device involved in *Brown v. Piper*, 91 U.S. 37, 41 (1875): "The thing was within the circle of what was well known before, and belonged to the public. No one could lawfully appropriate it to himself, and

exclude others from using it in any usual way for any purpose to which it may be desired to apply it." Similarly in *Roberts v. Ryer*, 91 U.S. 150, 157 (1875): "[T]he inventor of a machine is entitled to all of the uses to which it can be put, no matter whether he conceived the idea of the use or not."

This principle has been recently reasserted and applied. Thus, in *Beckman Instruments, Inc. v. Chemtronics, Inc.*, 428 F.2d 555, 561 (5th Cir. 1970), the court stated: "the prior art is to be considered as covering all uses to which it could have been put. Thus a patent claiming a device that has already been put to use, albeit in a different manner, is invalid; in order to be valid over the prior art, it must claim not novel use, but novel conception." *See also Graham v.*

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[2]The doctrine that an old device applied to a new use may not be patented has been put on statutory grounds:

"These cases are merely expressive of the principle that the grant of a patent on a composition or machine cannot be predicated on a new use of that machine or composition. We did not in those cases deny a patent to applicant because there was necessarily any lack of *inventiveness* in adapting the known composition to a new use. We recognize that it often requires perceptivity and intuitive genius of the highest order to grasp the idea that a device or material in one art may be utilized in another. The inventive faculties may be brought as fully into play in this regard as they would be in the creation of a device *de novo*. But a patent on an old product, based on its new use, has never been authorized by the patent laws which provided for patents only on a new and useful art, machine, manufacture, or *composition of matter*, or any new and useful improvement thereof (R.S. § 4886). As declared in Old Town Ribbon & Carbon Co. v. Columbia Ribbon & Carbon Mfg. Co., Inc., 2 Cir., 159 F.2d 379, 382:

'* * * it makes not the slightest difference how beneficial to the public the new function may be, how long a search it may end, how many may have shared that search, or how high a reach of imaginative ingenuity the solution may have demanded. All the mental factors which determine invention may have been present to the highest

(This footnote is continued on next page)

John Deere Co., supra, 383 U.S. at 4-10; *Aerotec Industries v. Pacific Scientific Co.*, 381 F.2d 795 (9th Cir. 1967).

Contrary to the district court's view, the old device put to a new use is not again patentable merely because the new use was unanticipated. As the Court said in *General Electric Co. v. Jewel Co.*, 326 U.S. 242, 249 (1945):

> "Where there has been use of an article or where the method of its manufacture is known, more than a new advantage of the product must be discovered in order to claim invention. See *DeForest Radio Co. v. General Electric Co.*, 283 U.S. 664, 682. It is not invention to perceive that the product which others had discovered had qualities they failed to detect. See *Corona Cord Tire Co. v. Dovan Chemical Corp.*, 276 U.S. 358, 369."

See also Wm. T. Alvarado Sales Co. v. Rubaloff, 263 F. 2d 926, 928 (9th Cir. 1959).

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degree, but it will not be patentable because it will not be within the terms of the statute. * * *'". Application of Hack, 245 F.2d 246, 248 (C.C.P.A. 1957).

The doctrine may have constitutional origins:

> "The patent standard is basically constitutional, Article I, § 8, of the Constitution authorizing Congress '[t]o promote the Progress of . . . useful Art's by allowing inventors monopolies for limited times. We stated in *Graham v. John Deere Co.*, 383 U.S. 1, 6, that under that power Congress may not 'enlarge the patent monopoly without regard to the innovation, advancement or social benefit gained thereby. Moreover, Congress may not authorize the issuance of patents whose effects are to remove existent knowledge from the public domain, or to restrict free access to materials already available. Innovation, advancement, and things which add to the sum of useful knowledge are inherent requisites in a patent system which by constitutional command must "promote the Progress of . . . useful Arts." This is the *standard* expressed in the Constitution and it may not be ignored.'" Anderson's-Black Rock v. Pavement Co., 396 U.S. 57, 61 (1969).

Plaintiffs' point to the district court finding that plaintiffs' exerciser "achieved several unexpected results, viz. there is a substantially constant resistance throughout the range of movement of the rope as it is pulled through the device, and the movement of the rope can be stopped at any point and there is no force tending to return the rope to its starting position, as with elastic members or weight-type exercisers."

While a new combination of old elements may be patentable if it produces unexpected results, plaintiffs' exerciser is not a new combination, but an old and well known one. The results referred to are not unexpected in a rope brake of this type—they are characteristic of it. As we have noted, the old device may not be patented a second time because it is discovered to have unexpected advantages in a new use.

2. Plaintiffs argue that there are differences rising to the level of invention between the rope brake exerciser described in their patent and the prior rope brake fire escapes.

Three changes are required to adapt the Leffelman and De Boucherville fire-escape devices to conform to the description in plaintiff's exerciser patent: First, the holes or "passageways" must be moved from the outer edge of the end pieces or "hubs" toward the center to a point next to the shaft, and flared inwardly, to reduce friction, and permit easier and smoother passage of the rope.[3] Second, the rope must be doubled back so that

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[3]The claims describe the "passageways" in the "hub portions" as "axially extending" and "circumferentially spaced," with "inner surfaces which are substantially coextensive with the outer surface of the shaft," and with "inner ends which are flared outwardly to slidably guide said rope onto and off the outer surface of the shaft."

both ends emerge from the same end of the device, rather than running through the device from one end to the other. And finally, the rope must be pulled through the device, rather than the device moving along the rope, as it is when used as a fire escape.

The first two changes are minor. Perhaps "ingenuity was required to effect the adaptation, but no more than that to be expected of a mechanic skilled in the art." *Cuno Engineering Corp. v. Automotive Devices Corp.*, 314 U.S. 84, 91-92 (1941). The significance of the second change is particularly questionable. The patent itself suggests that either arrangement may be used: "As mentioned hereinabove, a short length of rope can be pulled through any of these devices first in one direction and then in the other, or, a relatively long length of rope can be pulled continuously in one direction and then the direction reversed so as to pull the rope continuously in the other direction." Col. 6, lines 56-64. The third change is not a structural change at all, but a change in the manner of operating the device —a change in use that cannot be made the predicate of a new patent on the old device.

3. Plaintiffs rely upon the presumption of validity arising from the issuance of the patent by the Patent Office; but the presumption is insufficient in the fact of the pertinent prior art (the fire-escape patents) not before the patent examiners. *Aerotec Industries v. Pacific Scientific Co.*, *supra*, 381 F.2d at 803. They also rely upon the so-called secondary indicia of invention ("commercial success," "long felt but unfulfilled needs," and "copying"); but when patentable invention is clearly lacking, secondary considerations cannot fill the gap. *Great Atlantic & Pacific Tea Co. v. Supermarket*

Equipment Corp., 340 U.S. 147, 153 (1950); *Graham v. John Deere Co.*, 383 U.S. 1, 35-36 (1966); *Anderson's-Black Rock v. Pavement Co.*, 396 U.S. 57, 61 (1969); *Aerotec Industries, supra*, at 803.

III.

We deny defendants' request for attorneys' fees. This is not one of those "exceptional cases" in which an award of attorneys' fees would be proper. 35 U.S.C. § 285.

Reversed.

ELY, Circuit Judge (Dissenting):

I respectfully dissent. After a very carefully conducted trial, the district judge concluded, *inter alia*, as follows:

"III.

"United States patent No. 3,197,204 is good and valid in law.

"IV.

"The exerciser of patent No. 3,197,204, and as defined by the claims thereof, was not obvious at the time the invention was made to even a person skilled in the exerciser and/or physical education art, let alone to a person having ordinary skill in such art (35 U.S.C. 193). Although the strict test of "flash of creative genius" referred to by the Supreme Court in *Cuno Corp. v. Automatic Devices Corp.*, 314 U.S. 84 (1941), was apparently abolished by Congress by the inclusion of the last sentence in Section 103 of Title 35, United States Code (*Graham v. John Deere Co.*, 383 U.S. 1, 86 S. Ct. 684, 15 L. Ed. 2d 545), the completely new type of exerciser of the patent in suit appears to be the result of just such a flash of creative genuis, which is a further attribute of true invention.

There were also the unexpected results and unusual and surprising consequences referred to in *Great A. & P. Tea Co. v. Supermarket Equip. Corp.*, 340 U.S. 147.

"V.

"Patent No. 3,197,204 is presumed to be valid pursuant to 35 U.S.C. 282, and this presumption of validity is strengthened where, as here, the prior patents relied upon by the defendants are no more pertinent than the reference patents cited by the Patent Office examiners. *Neff Instrument Corporation v. Cohu Electronics, Inc.*, 298 F.2d 82, 86 (9 cir. 1961) and *Radio Corporation of America v. Radio Engineering Laboratories*, 293 U.S. 1, 54 S. Ct. 752, 79 L. Ed. 163 (1934).

"VI.

"The copying of the exerciser of the patent in suit by the defendants is further evidence of invention; they were familiar with its construction, its use and its advantages, and the demand which had been created for it. The prior art relied on by the defendants was permitted to lay dormant for more than half a century until the trial of this infringement action. *Rico-Wil Co. v. E.B. Kaiser Co.*, 179 F.2d 401, 404, (7 Cir. 1950), and *Colgate-Palmolive Company v. Carter Products*, 230 F.2d 855, 862 (4 Cir. 1956), cert. denied, 352 U.S. 843, 77 S. Ct. 43, 1 L. Ed. 2d 59.

"VII.

"The high degree of commercial success of the exerciser of patent No. 3,197,204 is further evidence of invention. *National Sponge Co. v. Rubber Corp. of Cal.*, 286 F.2d 731, 736 (9 Cir. 1961) and *Hayes Spray Gun Company v. E. C. Brown Company*, 291 F.2d 319 (9 Cir. 1961)."

The record reflects an abundance of evidence to support the factual findings which constitute the foundation for the foregoing legal conclusions and, while I recognize the validity of the general principles so carefully set forth by my Brother Browning, I am not persuaded that they are being correctly applied in the case at hand. As I see it, the proper resolution of the critical factual issues was difficult; hence, I would affirm the judgment because I cannot say with positive assurance that Judge Hill's factual findings were clearly erroneous.

Order.

United States Court of Appeals, for the Ninth Circuit.

Exer-Genie, Inc., and E. E. Holkesvick, Plaintiffs-Appellees, v. Alexander G. McDonald and Buddy Systems, Inc., Defendants-Appellants. No. 25,229.

Filed: Nov. 18, 1971.

Before: BROWING, ELY, and CARTER, Circuit Judges

The first paragraph of the opinion is modified to read:

> "This is an appeal from a decision of the district court holding claims 8, 9, and 10 of plaintiffs' Patent No. 3,197,204 valid and infringed. We conclude that these claims of the patent are invalid, and reverse."

The petitions for rehearing are denied. Judge Ely would grant appellees' petition for rehearing.

Appellants' bill of costs is allowed.

Dated: November 18, 1971.

Constitutional Provisions and Statutes Involved.

Art. 1, Sec. 8. The Congress shall have power . . . To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

35 U.S.C. 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of mat-

ter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title. July 19, 1952, c. 950, § 1, 66 Stat. 797.

35 U.S.C. 103. Conditions for patentability; non-obvious subject matter

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior act are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made. July 19, 1952, c. 950, § 1, 66 Stat. 798.

35 U.S.C. 282. Presumption of validity; defenses

A patent shall be presumed valid. The burden of establishing invalidity of a patent shall rest on a party asserting it. . . .

Rule 52, Federal Rules of Civil Procedure. Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the

findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memoradum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).